



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9979-38-OLEM]

Brownfields Utilization, Investment and Local Development (BUILD) Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Brownfields Utilization, Investment, and Local Development (BUILD) Act was enacted on March 23, 2018 as part of the Consolidated Appropriations Act, 2018. The BUILD Act reauthorized the Environmental Protection Agency's (EPA's) Brownfields Program, and made amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the 2002 Small Business Liability Relief and Brownfields Revitalization Act. These amendments affect brownfields grants, ownership and liability provisions, and State & Tribal Response Programs. The Environmental Protection Agency (EPA) is developing policy and guidance to implement the BUILD Act amendments. As part of this process, the EPA is soliciting comment on three provisions in the BUILD Act: the authority to increase the per-site cleanup grant amounts to \$500,000, the new multi-purpose grant authority, and the new small community assistance grant authority.

DATES: Comments will be accepted through **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please send any comments to BUILDAct@epa.gov no later than **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, U.S. EPA, (202) 566-2745, lentz.rachel@epa.gov or Megan Quinn, U.S. EPA, (202) 566-2773, quinn.megan@epa.gov.

SUPPLEMENTARY INFORMATION: Publication of this notice will start a two-week comment period for stakeholders to respond to the questions included in this notice. Comments will be accepted through **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. EPA expects to develop policy on these three grant programs and incorporate them into the Agency's guidelines for the FY 2019 brownfields grant cycle.

BACKGROUND

The Brownfields Utilization, Investment, and Local Development (BUILD) Act was enacted on March 23, 2018 as part of the Consolidated Appropriations Act, 2018. The BUILD Act reauthorized the EPA's Brownfields Program, and made amendments to CERCLA, as amended by the 2002 Small Business Liability Relief and Brownfields Revitalization Act. These amendments affect brownfields grants, ownership and liability provisions, and State & Tribal Response Programs. The EPA is developing policy and guidance to implement the BUILD Act. As part of that process, the EPA is soliciting comment on three provisions in the BUILD Act: the authority to increase the per site cleanup grant amounts to \$500,000, the new multi-purpose grant authority, and the new small community assistance grant authority.

Cleanup Grant Policy

The BUILD Act amended CERCLA Section 104(k)(3)(A)(ii) to increase the ceiling for brownfields cleanup grant funding from \$200,000 to \$500,000 per site; eligible entities can request a waiver up to \$650,000 per site, based on the anticipated level of contamination, size, or ownership status of the site. The applicant must own the site to expend any resources on cleanup

at the site. The Agency's primary concern is one of community access to brownfields cleanup funds. Increasing the amount of single cleanup grants will most likely decrease the total number of grants that may be awarded in any given fiscal year, therefore decreasing the number of brownfield sites cleaned-up and communities served, particularly when annual appropriations remain level or decrease.

Given these parameters, the Agency is interested in receiving comments from communities and other stakeholders on the following considerations:

1. If a community receives a \$500,000 cleanup grant, how likely is it that the community could meet the 20 percent cost share statutory requirement (CERCLA 104(k)(10)(B)(iii))? How would communities meet the 20 percent cost share requirement? Do stakeholders support a higher per grant funding amount, with cost share requirement of less than 20 percent, even if the result is fewer communities will receive brownfields cleanup grants?
2. In your community's experience, how long does the average brownfield cleanup take to complete? Please provide information on the average length of time, including from the time of state review and approval of a clean-up plan to the time when the brownfield site is ready for reuse. What are the barriers your community experiences in getting a brownfield site cleaned up and ready for reuse?

Multipurpose Grant Policy

The BUILD Act established a new Multipurpose Brownfield Grant program. Under this new authority, EPA may provide a maximum of \$1 million in funding per grant to an eligible entity to inventory, characterize, assess, plan for or remediate one or more brownfield sites within a target area. The statute requires that a Multipurpose Grant recipient own the

brownfields property prior to expending grant resources to remediate the property. The grant funding may be made available to a grant recipient for a maximum of five years. While the EPA has authority to award multipurpose grants up to \$1,000,000, the EPA is considering piloting the grants at no more than \$700,000.

Given these parameters, the Agency is interested in receiving comments from communities and other stakeholders on the following considerations:

1. Do communities most need funding for brownfields inventory, planning, site assessment or site remediation activities?
2. Do communities typically have in place an “overall plan for revitalization of the one or more brownfields within the proposed area in which the multipurpose grant will be used” or would they most likely need to create this plan using multipurpose grant funds?
3. What is a reasonable number of accomplishments (e.g., brownfields site assessments and site cleanups) to expect from a grant recipient that receives a \$700,000 multipurpose grant over a five-year grant period?
4. What complications and barriers will affect a grant recipient’s ability to achieve these accomplishments?

128(a) Small Grant Policy

The BUILD Act added a new authority for the EPA to make grants to states and tribes to provide training, technical assistance or research assistance to support a small or disadvantaged community up to \$20,000 per community. Site specific assessment and cleanup activities are not allowable expenditures under this grant authority. The EPA is developing further guidance on (1) the types of activities that are eligible expenses (including examples of such activities) and (2) the evaluation criteria that the EPA will use for evaluating and selecting proposals.

Accordingly, the EPA is soliciting comment on the following issues:

1. The EPA anticipates that state and tribes may provide the following activities to small and disadvantaged communities under this grant: Brownfields outreach and education, technical support, economic or market analyses to support the identification of reuse options for a brownfield site, the implementation or use of the EPA's Land Revitalization tools, and preparation of a needs assessment for developing a Tribal Response Program. What other types of activities should be considered as eligible expenditures under this grant program?
2. The EPA plans to include the following evaluation criteria for proposals submitted under this grant program: description of the target community, description/purpose of the proposed project, expected outcomes, description of key activities, what entity will be conducting the activities (e.g., state, tribe, contractor), leveraged resources being provided (as necessary), approximate timeline for completing the eligible activities, the amount of funding requested, an explanation of why existing state and tribal funding is inadequate to conduct or complete the eligible activities, and a demonstration of support from the community that will benefit from the funded activity. What other types of evaluation criteria may be useful for the EPA to use when evaluating proposals and selecting grant recipients?

Dated: June 6, 2018.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization,
Office of Land and Emergency Management.

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